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8 **UNITED STATES DISTRICT COURT**
FOR THE
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 UNITED STATES OF AMERICA, For the)
Use and Benefit of RENTAL SOLUTIONS,)
12 LLC,)

13 Plaintiff,)

14 vs.)

15 CENTRAL VALLEY CONSTRUCTION,)
INC., TPA-CKY JOINT VENTURE, CKY,)
16 INC., TAN PHUNG & ASSOCIATES,)
AMERICAN CONTRACTORS INDEMNITY)
17 COMPANY, and DOES 1-20, inclusive,)

18 Defendants.)

Civil Action File
No.

COMPLAINT FOR:

1. **ENFORCEMENT OF MILLER
ACT PAYMENT BOND**
2. **BREACH OF CONTRACT, and**
3. **OPEN BOOK ACCOUNT**

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20 Plaintiff United States of America for the use and benefit of RENTAL SOLUTIONS,
21 LLC ("RENTAL SOLUTIONS") complains and alleges:

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I.

Jurisdiction

1. The Court has federal question jurisdiction to hear this matter pursuant to the Miller Act (40 U.S.C. §§ 270a-270e), and 28 U.S.C. §§1331, 1337. This Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367.

II.

Intradistrict Assignment

2. Venue is appropriate in this District and Division because the real property which benefitted from the improvements is located in this District, and in Napa County, California.

3. Defendant AMERICAN CONTRACTORS INDEMNITY COMPANY ("AMERICAN") was at all times herein mentioned and now is, on information and belief, a corporation duly organized and existing, and authorized to transact business as surety upon bonds or undertakings in the State of California.

4. Defendant CENTRAL VALLEY CONSTRUCTION, INC. ("CENTRAL VALLEY") is and was at all relevant times mentioned herein a corporation duly organized under the laws of the State of California and doing business in California.

5. Defendant CKY, INC. ("CKY") is and was at all relevant times mentioned herein a corporation duly organized under the laws of the State of California and doing business in California.

6. Defendant TAN PHUNG & ASSOCIATES ("TPA") is and was at all relevant times mentioned herein a corporation duly organized under the laws of the State of California and doing business in California.

1 United States Department of the Army Corps of Engineers, more particularly identified as
2 Contract No. W91238-05-C-0019 (the "Prime Contract"), for that certain work of improvement
3 consisting of the flood control work at the Napa River, in Napa, California.

4 11. On or about July 21, 2005, said Defendants CKY and TPA, acting as TPA-CKY
5 JOINT VENTURE, as principal, and Defendant AMERICAN, as surety, executed and delivered
6 a certain Payment Bond, number 234122, guaranteeing the payment to all persons supplying
7 labor, equipment and materials in the prosecution of the work provided for in the Prime Contract
8 and any and all duly authorized modifications thereof, which bond was executed and delivered as
9 foresaid in accordance with the provisions of an act of the Legislature of the United States of
10 American, dated August 24, 1935, 49 Stat. 793, as amended (40 U.S.C. §§ 270a-270e).

11 12. Thereafter, and during the course of the performance and prosecution of the work
12 provided for in said Prime Contract, Defendants CKY and TPA, acting as TPA-CKY JOINT
13 VENTURE, entered into a subcontract with Defendant CENTRAL VALLEY for the
14 performance and prosecution of a part of the work described in said general contract between
15 Defendants CKY and TPA, acting as TPA-CKY JOINT VENTURE, and the United States of
16 America.
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18 13. During the course of the performance and prosecution of said public work, and under
19 and by virtue of said contract between Defendants CKY and TPA, acting as TPA-CKY JOINT
20 VENTURE, and CENTRAL VALLEY, between July 2006 and October 2006, Use Plaintiff
21 RENTAL SOLUTIONS rented equipment to Defendant CENTRAL VALLEY, at its special
22 instance and request, which equipment was furnished to be used in the prosecution of the work
23 provided for in the Prime Contract.
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1 14. Said equipment so furnished by Use Plaintiff RENTAL SOLUTIONS in and for the
2 prosecution of said work as aforesaid, was and is reasonably worth the sum of \$41,629.75, of
3 which nothing has been paid or credited on said amount; and there is now due, owing and unpaid
4 to Use Plaintiff RENTAL SOLUTIONS the sum of \$41,629.75, after deducting all just credits
5 and offsets, and the same has not been paid, neither the whole nor any part thereof.

6 15. Within ninety (90) days from the date on which Use Plaintiff RENTAL SOLUTIONS
7 furnished the last of the equipment for which its claim hereunder is made, said plaintiff gave
8 written notice to said general contractor, defendants CKY and TPA, acting as TPA-CKY JOINT
9 VENTURE, stating with substantial accuracy the amount claimed and the name of the party to
10 whom the equipment was furnished, which said notice was served on Defendants CKY and TPA
11 by registered mail, postage prepaid, in an envelope addressed to said contractor at its business
12 address specified in said contract and bond.

13 16. Use plaintiff RENTAL SOLUTIONS has not been paid in full for said equipment
14 furnished in the prosecution of said work, as aforesaid; more than ninety (90) days have elapsed
15 after the date on which the last of said equipment was furnished as herein above set forth; the
16 balance thereof unpaid at the time of commencement of this action is \$41,629.75.

17 17. WHEREFORE, Use Plaintiff RENTAL SOLUTIONS prays for judgment against the
18 Defendants CENTRAL VALLEY, CKY, TPA, TPA-CKY JOINT VENTURE and AMERICAN,
19 jointly and severally, in the sum of \$41,629.75, together with interest thereon at the rate of ten
20 percent (10%) per annum from the date of filing complaint herein, until paid, and together with
21 late charges, attorney's fees, costs of suit herein incurred, and for such other and further relief as
22 the Court deems just and equitable.

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IV.

Second Cause of Action

BREACH OF CONTRACT UNDER CALIFORNIA LAW
(Against Defendant CENTRAL VALLEY)

18. Plaintiff RENTAL SOLUTIONS incorporates by reference the allegations contained in paragraphs 1 through 17, above.

19. As a California licensed contractor, CENTRAL VALLEY's conduct and contract is governed by California substantive law.

20. In addition to equipment rented by RENTAL SOLUTIONS to CENTRAL VALLEY for prosecution of the work provided for in said Prime Contract, RENTAL SOLUTIONS and CENTRAL VALLEY contracted for rental of equipment for other projects including, the Pine Meadows subdivision, under which contracts CENTRAL VALLEY incurred charges owing to RENTAL SOLUTIONS in the amount of \$4,554.00, which charges CENTRAL VALLEY has failed and refused to pay to RENTAL SOLUTIONS despite demand therefore by RENTAL SOLUTIONS.

21. CENTRAL VALLEY's conduct alleged above is in violation of its contractual duties with RENTAL SOLUTIONS, including, but not limited to, its duty to pay promptly under California's prompt payment statutes.

22. RENTAL SOLUTIONS has been damaged by CENTRAL VALLEY's breach of contract and failure to pay the total sum of \$46,183.75 owing to RENTAL SOLUTIONS.

23. RENTAL SOLUTIONS is entitled to interest penalties under California Governmental Code §3262.5 in the amount of 2% per month.

24. WHEREFORE, Plaintiff RENTAL SOLUTIONS prays for judgment against defendant CENTRAL VALLEY, in the amount of \$46,183.75, plus statutory interest, late

1 charges, attorney's fees and costs of suit herein incurred, and for such other and further relief as
2 the Court deems just and equitable.

3 V.

4 **Third Cause of Action**

5 **OPEN BOOK ACCOUNT**
6 **(Against Defendant CENTRAL VALLEY)**

7 25. Plaintiff RENTAL SOLUTIONS hereby refers to, realleges, and incorporates by
8 reference each and every allegation contained in the First and Second Cause of Action.

9 26. Within the past four years, Defendants, CENTRAL VALLEY and DOES 1-20, and
10 each of them, became indebted to Plaintiff for money due in the sum of \$46,183.75, on an open
11 book account for money due. Despite demand, said sum remains due, owing and unpaid.

12 27. WHEREFORE, Plaintiff prays for judgment against CENTRAL VALLEY in the
13 amount of \$46,183.75, plus statutory interest, late charges, attorney's fees and costs of suit
14 herein incurred.

15 Dated: September 21, 2007

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17 By: Stan D. Blyth
18 STAN D. BLYTH, Attorneys for
19 RENTAL SOLUTIONS, LLC
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